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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,  
JEREMY DAVIS, CHRISTOPHER  
CASTILLO, and MONIQUE TRUJILLO  
individually and on behalf of all other  
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,  
Defendant.

Case No. 5:20-cv-03664-YGR-SVK

**JOINT CASE MANAGEMENT  
STATEMENT**

Judge: Hon. Yvonne Gonzalez Rogers  
Courtroom 1 – 4th Floor  
Date: February 11, 2022  
Time: 12:00 p.m.

CASE NO. 5:20-cv-03664-YGR-SVK

**JOINT CASE MANAGEMENT STATEMENT**

1 Pursuant to the Clerk’s Notice Setting Case Management Conference (Dkt. 392), and in  
2 advance of the Case Management Conference set for Friday, February 11, at 12:00 p.m., Plaintiffs  
3 and Defendant Google LLC submit this Joint Case Management Statement. The previous Joint Case  
4 Management Statement is Dkt. 275.

5 **1. JURISDICTION AND SERVICE**

6 Google has been served and the Court has jurisdiction over this matter.

7 **2. FACTS**

8 On June 2, 2020, Plaintiffs filed a nationwide putative class action lawsuit against Google,  
9 alleging violations of privacy on behalf of users who utilize private browsing modes, including  
10 Incognito mode in Google’s Chrome browser. Dkt. 1. Plaintiffs asserted four causes of  
11 action. *Id.* On September 21, 2020, Plaintiffs filed their Amended Complaint. Dkt. 68. On October  
12 21, 2020, Google moved to dismiss Plaintiffs’ Amended Complaint. Dkt. 82. On March 12, 2021,  
13 Judge Koh denied Google’s motion to dismiss. Dkt. 113. Pursuant to a stipulated agreement with  
14 Google, Plaintiffs sought leave to file their Second Amended Complaint on April 14, 2021 to include  
15 two new causes of action, i.e., breach of contract and Unfair Competition Law claims, (Dkt. 136-2),  
16 which was granted the next day. Dkt. 138. On May 17, 2021, Google filed its motion to dismiss  
17 the two new claims. Dkt. 164. On December 22, 2021, Judge Koh denied Google’s motion to  
18 dismiss. Dkt. 363. Google filed its answer to the Second Amended Complaint on January 14,  
19 2022. Dkt. 387. The case has proceeded through fact discovery for the past 18 months. Fact  
20 discovery is set to close on March 4, 2022; merits expert discovery is set to close on May 19, 2022;  
21 and class certification briefing will commence on May 26, 2022. Dkt. 377.

22 ***Plaintiffs’ Statement:***

23 This case concerns Google’s collection and use of private browsing information, while  
24 people visit non-Google websites using Google’s private browsing mode (called “Incognito” with  
25 Google’s Chrome browser) or other private browsing modes. *See* Dkt. 136-1 (operative complaint).  
26 Google assured users that they were “in control of what information [they] share with Google” and  
27 that they could adjust their privacy settings “across [Google’s] services” to “control what [Google]  
28 collect[s] and how [their] information is used.” SAC ¶¶ 2, 42. To exercise this “control,” Google

1 invited users to “browse the web privately,” including through Google’s Incognito mode. SAC ¶  
2 42. But Google in fact – without disclosure or consent – collects, tracks, and stores private browsing  
3 histories, regardless of the user’s choice of browsing mode. “Choice” is thus an illusion. Google  
4 collects and uses people’s private browsing information for Google’s own enrichment. Google does  
5 not dispute this collection, and Judge Koh already rejected many of Google’s contentions in her  
6 motion to dismiss rulings. Dkts. 113, 363.

7       Discovery supports Plaintiffs’ claims, where Google employees described Google’s  
8 Incognito mode (internally, not publicly) as “effectively a lie” (GOOG-BRWN-00630517),  
9 “broken” (GOOG-BRWN-00441285), “misleading” (GOOG-BRWN-00475063), a “confusing  
10 mess” (GOOG-CABR-03827263), and “not truly private” (GOOG-BRWN-00406065), with  
11 concerns about “collecting data without consent in Incognito mode” (GOOG-BRWN-00686207)  
12 and “people operating under a false sense of privacy” (GOOG-BRWN-00457255). Google knew  
13 there were “common misconceptions about private mode” (GOOG-BRWN-00042388), with  
14 Google “over-promising and under-delivering” (GOOG-BRWN-00140297).

15       Google has collected private browsing information from tens of millions of Americans, and  
16 from billions of visits to non-Google websites. One set of internal Google calculations shows that,  
17 over just a 28-day period through November 15, 2018, over ██████████ “unique users” browsed over  
18 ██████████ webpages using Google’s Incognito mode (GOOG-BRWN-00750077). Google  
19 calculations limited to the United States, for just Android and Apple iOS devices (not including any  
20 computers), and just a 28-day period in 2020, calculates over ██████████ “unique users of incognito  
21 mode” (GOOG-BRWN-00601022); *see also* GOOG-BRWN-00406075 (“Incognito mode is used  
22 by ██████████ of Chrome users”); GOOG-BRWN-00529122 (“Incognito mode is used by ██████████ of Chrome  
23 users, and ██████████ use it at least once per week”); GOOG-BRWN-00047631 (“██████████ of weekly Chrome  
24 users browse in Incognito mode at least once a day”).

25       ***Google’s Statement:***

26       Plaintiffs complain that private browsing modes, including Chrome’s Incognito mode, do  
27 not provide *complete* privacy from Google and other entities that provide services to websites when  
28 browsing the Internet. But Google did not present private browsing or Incognito mode in that

1 manner. In fact, Incognito mode works exactly as described in Google’s disclosures. Each and  
2 every time a user initiates a private browsing session on Google’s Chrome browser (“Incognito”  
3 mode), Google displays a page that says that, in Incognito, “you can browse privately, and *other*  
4 *people who use this device* won’t see your activity.” Google similarly explains in the Chrome  
5 Privacy Notice and elsewhere that Incognito “limit[s] the information Chrome stores *on your*  
6 *system*,” including “basic browsing history information.” This is true and undisputed: In Incognito,  
7 Chrome browser’s “History” does not record the websites visited during the Incognito session so  
8 that “other people who use this device won’t see your activity.”

9 Incognito also provides privacy in other ways. For example, when a user starts a new  
10 Incognito session, she is automatically logged out of her Google Account (and thus session activity  
11 is not saved to her Account). Incognito also creates a “fresh cookie jar,” so cookies set on the  
12 browser *before* the session are not shared with the websites visited (or the web-services on the  
13 site). Thus, the device appears as a first-time visitor to websites and any services on those  
14 sites. Google’s disclosures teach new cookies may be placed on the browser *during* an Incognito  
15 session and “are remembered while you’re browsing, but deleted when you exit Incognito  
16 mode.”<sup>1</sup> Accordingly, Google does not associate the data received during an Incognito session with  
17 the user or her device after the Incognito session ends.

18 Plaintiffs offer a litany of soundbites from Google’s productions to color the Court’s view  
19 on the merits, but all are taken out of context and ignore key testimony from Google witnesses—  
20 including those who authored the very documents Plaintiffs tout. Far from bolstering Plaintiffs’  
21 claims, Google witnesses consistently testified that the company’s disclosures regarding Incognito  
22 mode are “clear and accurate.” *See, e.g.,* Palmer Dep. Tr. 41:12. These out-of-context snippets  
23 designed to inflame and not inform cannot change the fact that Plaintiffs’ legal claims are meritless.

### 24 **3. LEGAL ISSUES**

25 The parties’ first Joint Case Management Statement includes a summary of the legal issues.  
26 Given Judge Koh’s recent motion to dismiss ruling upholding Plaintiffs’ breach of contract and UCL  
27

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28 <sup>1</sup> <https://support.google.com/chrome/answer/7440301#>

1 claims (Dkt. 363), the following two causes of action will also need to be adjudicated: Plaintiffs’  
2 Sixth Cause of Action (Breach of Contract) and Plaintiffs’ Seventh Cause of Action (Cal. Bus. &  
3 Prof. Code § 17200).

#### 4 **4. MOTIONS**

##### 5 Motions Decided Since the Last Joint Case Management Conference Statement (Dkt. 275)

6 The Court denied Google’s motion to dismiss Plaintiffs’ Second Amended Complaint (Dkt.  
7 363) and granted Plaintiffs’ motion for an extension of the discovery deadlines and Google’s motion  
8 for an extension of its time to file an Answer (Dkt. 377). The parties briefed numerous discovery  
9 disputes before Magistrate Judge van Keulen, some of which have been resolved. Dkts. 288, 298,  
10 307, 335, 353, 358, 359, 365, 385, 393. The Court also issued orders related to the ongoing Special  
11 Master discovery proceedings. Dkts. 297, 318, 336. The Court granted various motions to seal  
12 (Dkts. 276, 285, 286, 306, 320, 341, 350, 380), granted in part and denied in part one motion to seal  
13 (Dkt. 330), granted one motion for admission *pro hac vice* (Dkt. 346) and issued an order appointing  
14 commissioners pursuant to the Hague Convention (Dkt. 369).

15 Plaintiffs’ Additional Position: The Court has denied Google’s motions for relief from  
16 Magistrate Judge van Keulen’s orders (Dkts. 359, 365), permitting Plaintiffs to depose Google  
17 officers Lorraine Twohill and Sundar Pichai. Google’s motions were filed on January 3 and January  
18 10 (Dkts. 375, 382). The two-week time period for the Court to rule on them expired on January 17  
19 and 24, respectively. Because Judge Koh retained this case until January 24 (14 days after Google’s  
20 second motion), and did not rule Google’s motions, they are “deemed denied.” L. Civ. R. 72-2(d).  
21 Below, Google incorrectly implies that Judge Koh stopped working on this case following Chief  
22 Judge Seeborg’s December 23 Notice regarding potential reassignment (Dkt. 364). In fact, Judge  
23 Koh continued ruling on motions, including by issuing a January 4 order resolving two motions.  
24 Dkt. 377 (after Google filed its appeal of the Ms. Twohill deposition order). Judge Koh could have,  
25 but chose not to, rule on Google’s appeals before this case was assigned to Your Honor, and  
26 Plaintiffs respectfully submit that they should be permitted to proceed with those depositions.

27 Google’s Additional Position: Google disagrees that its motions for relief regarding the  
28 depositions of its Chief Executive Officer (Dkt. 382) and Chief Marketing Officer (Dkt. 375) have

1 been “deemed denied” under Local Rule 72-2(d), which states “[t]he Clerk shall notify parties when  
2 a motion has been deemed denied.” The parties have not received any such notice. The motions  
3 for relief were filed after Chief Judge Seeborg indicated this case would be transferred to a new  
4 presiding Judge due to Judge Koh’s confirmation to the Ninth Circuit. *See* Dkt. 364. The case was  
5 reassigned to Your Honor before the 14-day period expired. Dkt. 391. Given these procedural  
6 circumstances, and that the motions have not been deemed denied under the language of Local Rule  
7 72-2(d), Google asks that this Court adjudicate them. They are the first and only discovery  
8 objections that Google has taken up to the District Court, and they raise important, meritorious  
9 objections to the Apex discovery sought by Plaintiffs.

#### 10 Pending Motions

11 Plaintiffs have moved for leave to file a Third Amended Complaint (Dkt. 395) to revise their  
12 class definitions, which Google opposes. Plaintiffs’ Rule 37(b) motion for evidentiary sanctions  
13 (Dkt. 292) has been stayed pending resolution of the issues before Special Master Brush (Dkt. 297).  
14 One motion to seal remains outstanding. Dkt. 370.

#### 15 Anticipated Motions

16 ***Plaintiffs’ Statement:*** Plaintiffs anticipate submitting additional discovery disputes to  
17 Magistrate Judge van Keulen, will move for class certification, and may also seek summary  
18 judgment and/or adjudication on certain claims or issues.

19 ***Google’s Statement:*** Google anticipates opposing class certification and moving for  
20 summary judgment on all or some of the defenses and claims.

### 21 **5. AMENDMENT OF PLEADINGS**

22 Pursuant to stipulation of the parties, Judge Koh previously granted Plaintiffs’ request for  
23 leave to file their Second Amended Complaint. Dkt 138; Dkt 136-1 (“SAC”). Plaintiffs have moved  
24 for leave to file a Third Amended Complaint. Dkt. 395. Google opposes Plaintiffs’ attempt to amend  
25 their Complaint again.

### 26 **6. EVIDENCE PRESERVATION**

27 The parties reviewed the ESI Guidelines and conferred regarding evidence preservation.

28 ***Plaintiffs’ Statement:***

1 Plaintiffs remain concerned that Google is not preserving relevant records of Google's  
2 collection and use of private browsing data. Plaintiffs raised some of these concerns in their Rule  
3 37(b) motion for evidentiary sanctions. Dkt. 292. On December 3, 2021, Plaintiffs sent Google a  
4 draft letter brief identifying particular preservation deficiencies, including by pointing out that the  
5 April 2021 order which Google cites below was "without prejudice to Plaintiffs' ability to raise a  
6 challenge based upon new evidence not currently before the Court." *Calhoun* Dkt. 174. That order  
7 was issued before the Special Master process began, through which Google has been required to  
8 identify the particular logs, data sources, and fields that contain data which should be preserved.  
9 Google has preserved class identification data in other privacy cases, and it has no excuse for why  
10 it did not preserve such a small subset of relevant information for this case. Plaintiffs plan to raise  
11 these issues with Magistrate Judge van Keulen.

12 ***Google's Statement:***

13 There is no deficiency in Google's preservation efforts. Magistrate Judge van Keulen has  
14 already ordered that "Google need not suspend its standard retention periods applicable to data logs  
15 that reflect event-level data of Chrome users in the United States." *Calhoun*, Dkt. 174; *see also* Dkt.  
16 147-1 at 1 (referring to *Calhoun* order). Further, Plaintiffs filed their Rule 37(b) motion over three  
17 and a half months ago (Dkt. 292), and Magistrate Judge van Keulen stayed briefing *sua sponte* five  
18 days later (Dkt. 297 at 2) and vacated the hearing on November 8, 2021. Dkt. 324. Plaintiffs' draft  
19 letter brief merely restates the baseless arguments in the Rule 37(b) motion.

20 **7. DISCLOSURES**

21 The parties exchanged initial disclosures on September 8, 2020. Plaintiffs served amended  
22 disclosures on March 16, 2021.

23 **8. DISCOVERY**

24 The parties have engaged in substantial discovery, including document production,  
25 depositions, written discovery, and an ongoing Special Master process. To date, Google has  
26 produced more than 6.6 million pages of documents from 42 custodians and the Named Plaintiffs  
27 have produced over 1,000 pages. As for depositions, Google has deposed three of the Named  
28 Plaintiffs and Plaintiffs have deposed twelve Google witnesses, including two Rule 30(b)(6)

1 witnesses. The Court recently extended the close of fact discovery to March 4, 2022 (Dkt. 377),  
2 and the parties are working hard to meet that deadline. The parties previously agreed to and the  
3 Court entered a protective order (Dkt. 81) and an ESI order (Dkt. 80), and the ESI order was  
4 subsequently modified by the Court (Dkt. 91).

5 ***Plaintiffs' Statement:***

6 Unless the parties can resolve their disputes, Plaintiffs currently anticipate filing the  
7 following with Magistrate Judge van Keulen: (i) a joint letter brief regarding disputed 30(b)(6)  
8 deposition topics; (ii) a joint letter brief regarding Google's refusal to answer certain Requests for  
9 Admissions and Interrogatories; (iii) a joint letter brief regarding Google's refusal to produce  
10 custodial documents from the employee who led the company's 2020 efforts to quantify and identify  
11 Incognito traffic within Google's logs; and (iv) Google's failure to preserve relevant evidence.  
12 Plaintiffs have sent Google draft letter briefs covering all four of these disputes. Google's claim  
13 below that these disputes are "unripe" is belied by the fact that Google has already provided drafts  
14 of the letter briefs for disputes (i) and (iii) and has agreed to brief (ii). Plaintiffs continue to seek  
15 Google's response for item (iv).

16 In addition, Plaintiffs are growingly increasingly concerned with Google's failure to abide  
17 by Court-ordered deadlines for the data production process being overseen by Special Master Brush.  
18 See Dkt. 331 (Court order setting deadlines). The Court-ordered process calls for Google to  
19 complete four separate iterative searches and productions. Google was supposed to complete  
20 production for the first of those four searches by November 26, 2021, but Google only this week  
21 even purported to complete that production. With three iterative searches left, Plaintiffs are  
22 concerned there will not be enough time for their experts to evaluate the data in advance of the  
23 March 18 deadline for expert reports. In the Court's own words, this data production process is  
24 intended to provide "Plaintiffs the tools to identify class members using Google's data, to quantify  
25 interceptions of certain private browsing data, as well as to formulate damages models." Dkt. 331  
26 at 4. Plaintiffs are raising these issues with Google and the Special Master and, if necessary,  
27 Magistrate Judge van Keulen.

1           ***Google’s Statement:***

2           The parties are briefing the first, second, and third disputes that Plaintiffs identify above.  
3           With respect to the fourth dispute, the Court has already granted a Protective Order for Google  
4           regarding the preservation of evidence (Dkt. 147-1), and Magistrate Judge van Keulen ruled that  
5           Google need not respond to Plaintiffs’ motion relating to the same issues. Dkt. 297 at 2. Plaintiffs’  
6           unilateral approach of sending draft letter briefs for certain disputes before any meet and confer has  
7           been conducted, violates the letter and spirit of the meet and confer process under the Local Rules  
8           of the Northern District of California and Magistrate Judge van Keulen’s Civil and Discovery  
9           Referral Matters Standing Order. It has resulted in unproductive meet and confers that diminish any  
10          meaningful opportunity to resolve disputes without burdening the Court.

11          Plaintiffs “concern” with the technical process of producing event-level data is no fault of  
12          Google, which has been faithfully following the expert guidance of Special Master Douglas Brush  
13          and the clarifying orders of Magistrate Judge van Keulen. Google has completed the searches and  
14          productions ordered by the Special Master; Plaintiffs have not yet provided the search terms and  
15          parameters for any further searches.

16          **9. CLASS ACTIONS**

17          Plaintiffs will file a motion for class certification, due on May 26, 2022. Dkt. 377. Counsel  
18          for the parties have reviewed the Procedural Guidance for Class Action Settlements.

19               ***Plaintiffs’ Statement:***

20          Plaintiffs’ claims involve uniform Google contracts, representations, and practices during  
21          the class period (back to June 1, 2016), with Plaintiffs seeking monetary and injunctive relief for a  
22          nationwide class. As confirmed by Google’s internal documents, this case involves “common”  
23          misconceptions (GOOG-BRWN-00042388) based on uniform Google disclosures and practices,  
24          with Google presenting the Incognito Splash Screen (at issue in Judge Koh’s rulings) every time a  
25          user started using Incognito. Plaintiffs’ claims are well suited for class treatment. *E.g., In re*  
26          *Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 601 (9th Cir. 2020) (noting intrusion on  
27          seclusion and invasion of privacy claims turn on “reasonable expectation of privacy” and  
28          “reasonable person” standard); *Opperman v. Path, Inc.*, No. 13-CV-00453-JST, 2016 WL 3844326,

1 at \*11 (N.D. Cal. July 15, 2016) (certifying intrusion upon seclusion claims because “elements can  
2 be proven on a common basis”); *Ewert v. eBay, Inc.*, No. C-07-02198 RMW, 2010 WL 4269259, at  
3 \*7 (N.D. Cal. Oct. 25, 2010) (with “standardized agreement” the “court need not delve into the  
4 actual knowledge of individual class members”); *Ellsworth v. U.S. Bank, N.A.*, No. C 12-02506 LB,  
5 2014 WL 2734953, at \*20 (N.D. Cal. June 13, 2014) (“courts routinely certify class actions  
6 regarding breaches of form contracts”). In her most recent motion to dismiss ruling, Judge Koh  
7 explained that “the contract must be interpreted objectively” and that “the objective meaning of a  
8 contract is determined by reading the contract ‘from the perspective of a reasonable [Google] user.’”  
9 Dkt. 363 at 23 (quoting *In re Facebook, Inc., Consumer Priv. User Profile Litig.*, 402 F. Supp. 3d  
10 767, 789 (N.D. Cal. 2019)) (alteration in original). “By offering an interpretation about what  
11 Plaintiffs ‘reasonably expected,’ Plaintiffs provide that perspective.” *Id.* Google’s argument that it  
12 does not violate the Chrome promise to not save “(private) browsing histories,” by having Chrome  
13 instead route the data onto remote Google servers, is disingenuous and a uniform breach of contract.

14 This case involves Google’s systematic and uniform collection of private browsing  
15 information from millions of Americans (*see* Section 2, *supra*), but Plaintiffs are also still awaiting  
16 certain discovery relevant for purposes of seeking class certification.

17 ***Google’s Statement:***

18 Dozens of Google and third-party disclosures, including countless public articles, explain  
19 exactly how Incognito mode works – (1) Chrome does not save the users’ browsing history or  
20 information entered in forms (unless the user signs into their Google Account) and (2) cookies and  
21 site data are deleted after the user closes all Incognito windows and tabs. This is also consistent  
22 with how other browsers disclose private browsing modes. Simply put, the fact that private  
23 browsing modes are not intended to block ***all*** data transmissions to third party web-service providers  
24 is not a secret. *See, e.g.*, <https://www.w3.org/2001/tag/doc/private-browsing-modes/> (stating that  
25 “[t]he Web should be accessible in private and normal browsing modes” and recommending that  
26 “browser vendors should work towards achieving private browsing mode [that] work in a way  
27 indistinguishable . . . from the normal mode, to respect the user’s . . . privacy in choosing it”). And  
28 to the extent proposed class members did read one or more of these disclosures, Judge Koh held that

1 “the fact that a contract is ‘reasonably susceptible’ to one interpretation does not mean that the  
2 contract is not ‘reasonably susceptible’ to a competing interpretation.” Dkt. 363 at 19. Thus issues  
3 of express and implied consent, consumers’ actual expectations with respect to private browsing  
4 modes, and the inability to actually identify class members given how private browsing functions,  
5 among myriad other issues, prevent the certification of the proposed class.

6 **10. RELATED CASES**

7 The parties are not aware of any related cases or proceedings pending before another judge,  
8 court, or administrative body.

9 **11. RELIEF**

10 *Plaintiffs’ Statement:*

11 As stated in their Second Amended Complaint (Dkt. 136-1), and without any changes in  
12 their proposed Third Amended Complaint (Dkt. 395-2), Plaintiffs seek the following relief:

- 13 ● compensatory damages, including statutory damages where available;
- 14 ● nominal damages;
- 15 ● non-restitutionary disgorgement of all of Google’s profits that were derived, in whole  
16 or in part, from its collection and use of private browsing information;
- 17 ● restitution of the value of the private browsing information that Google improperly  
18 collected, including any diminution in value as a result of Google’s conduct;
- 19 ● injunctive relief (including deletion of all private information collected by Google);  
20 and
- 21 ● any other relief the Court deems appropriate.

22 Plaintiffs are still in the process of calculating damages, in part based on Google documents  
23 quantifying the financial impact of limiting Google’s collection of private browsing information. In  
24 2020, shortly before this lawsuit was filed, Google employees calculated that one change (blocking  
25 third-party cookies by default) to one private browsing mode (Incognito mode for Chrome) resulted  
26 in [REDACTED] (GOOG-CABR-04455208). That is one  
27 basis upon which Plaintiffs are calculating damages. Plaintiffs are entitled to these damages under  
28 many of their claims, including their breach of contract claim. “The Ninth Circuit has said that

1 ‘under California law, a defendant’s unjust enrichment can satisfy the “damages” element of a  
2 breach of contract claim, such that disgorgement is a proper remedy.’” *In re Google Assistant Priv.*  
3 *Litig.*, No. 19-CV-04286-BLF, 2021 WL 2711747, at \*14 (N.D. Cal. July 1, 2021) (quoting *Foster*  
4 *Poultry Farms, Inc. v. SunTrust Bank*, 377 Fed. App’x 665, 669 (9th Cir. 2010)).

5 ***Google Statement:***

6 Google objects to Plaintiffs’ attempt (again) to litigate the merits of their damages theories  
7 in this Joint CMC Statement (*see* Dkt. 275 at 2-3, 21), which is premature and inappropriate. Google  
8 will address Plaintiffs’ damages theories at the appropriate time.

9 **12. SETTLEMENT AND ADR**

10 No settlement discussions have taken place. Pursuant to ADR Local Rule 3-5 and Civil Local  
11 Rule 16-8, on August 19, 2020, the parties met and conferred regarding the available dispute  
12 resolution options and filed their respective ADR Certifications. The parties do not believe that  
13 ADR is appropriate at this time.

14 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

15 The parties have not consented to have a magistrate judge conduct all further proceedings.

16 **14. OTHER REFERENCES**

17 Apart from the current Special Master process, the parties do not believe the case is suitable  
18 for reference to binding arbitration, a special master, or the JPML.

19 **15. NARROWING OF ISSUES**

20 The parties are working together to see if there are issues that can be narrowed by agreement  
21 or otherwise to expedite the presentation of evidence at trial.

22 **16. EXPEDITED TRIAL PROCEDURE**

23 The parties believe this case should not be handled under the Expedited Trial Procedure of  
24 General Order No. 64 Attachment A.

25 **17. SCHEDULING**

26 On January 4, 2022, the Court granted Plaintiffs’ Motion for Relief from Case Management  
27 Schedule, extending the case deadlines. Dkt. 377. Here is the current case schedule:  
28

Action	Deadline
Fact Discovery	March 4, 2022
Opening Expert Reports	March 18, 2022
Rebuttal Expert Reports	April 15, 2022
Close of Expert Discovery	May 19, 2022
Class Certification Motion	Motion: May 26, 2022 Opp'n: July 14, 2022 Reply: August 11, 2022
Class Certification Hearing	September 22, 2022

## 18. TRIAL

**Plaintiffs' Statement:** Plaintiffs currently estimate the trial in this case to last approximately 15 days.

**Google's Statement:** It is premature to estimate trial length at this time and Google proposes to revisit the issue at a later CMC. It is likewise premature to determine whether any claims will survive summary judgment and will be resolved by a jury.

## 19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

The parties previously filed their certificates of interested entities (Dkt. 14, 52) and have no updates.

## 20. PROFESSIONAL CONDUCT

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct of the Northern District of California.

## 21. OTHER MATTERS

None.

1 DATED: February 4, 2022

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**ATTESTATION**

I, Amanda Bonn, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: February 4, 2022

By: /s/ Amanda Bonn